

ROBERT E. WHITE ET AL.

IBLA 84-281, IBLA 84-282,
84-283

Decided July 10, 1984

Appeals from decisions of the Nevada State Office, Bureau of Land Management, rejecting desert land entry applications. N 29257, N 28862, and N 28864.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water Right

A desert land entry application is properly rejected where the applicant is relying for a source of water on a water permit application which has been canceled by the state water authority, since a desert land entry application without evidence of a water right must be rejected.

APPEARANCES: Robert E. White, Andrew Butts, Jay A. Butts, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On January 30, 1980, Andrew Butts and Jay A. Butts filed desert land entry applications N 28862 and N 28864, respectively, pursuant to the provisions of the Desert Land Act, 43 U.S.C. § 321 (1982). ^{1/} On February 19, 1980, Robert E. White filed desert land entry application N 29257. By separate decisions dated December 8, 1983, the Nevada State Office, Bureau of Land Management (BLM), rejected those desert land entry applications. In each case the basis for rejection was the same, failure to proceed as far as possible in acquiring a right to water for irrigation, as required by 43 CFR 2521.2(d). The applicant in each case filed an appeal. The appeals have been consolidated by the Board for decision because the issues are identical.

[1] The Desert Land Act provides for the entry of desert lands for the purpose of reclaiming them "by conducting water upon the same * * * Provided, however, That the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation." 43 U.S.C. § 321

^{1/} Andrew Butts sought 320 acres described as S 1/2 sec. 5, T. 26 N., R. 62 W., Mount Diablo meridian. Jay A. Butts' application described the N 1/2 of the same section.

(1982) (emphasis in original). The pertinent regulation, 43 CFR 2521.2(d), provides that no desert land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. The Department has consistently held that a desert land entry application without evidence of a water right must be rejected. James Neil Fletcher, 78 IBLA 330, 331 (1984), and cases cited therein.

Herein, each appellant was relying on a separate water permit application as a source of water for the entry. 2/ Each of the water permits was sought by a person or persons other than appellants. Amendments of those permit applications were filed to cover appellants' proposed entries. In each case file there is a copy of a letter dated July 10, 1980, from the Nevada State Engineer, Department of Conservation and Natural Resources, Division of Water Resources, to one John P. Stovall, Provo, Utah, explaining that certain amended permit applications, inter alia, Nos. 39519, 39526, and 39527, could not be accepted for filing because the amendments proposed changes to the location of the water source from one groundwater basin to another. 3/ The State engineer further explained that the amended applications could be refiled within 60 days showing a point of diversion located in the original groundwater basin or if appropriation of water in another groundwater basin was desired, a new application could be filed. He added that if no amendment was filed on or before September 8, 1980, the applications would be subject to cancellation. No amendments were filed and each permit application was canceled. 4/

The statement of reasons of each applicant presents the same argument. They state that the respective permit applications have not been canceled and that they have proceeded as far as possible to acquire the right to appropriate water. They consider BLM's decisions to be void.

2/ White's entry was associated with water permit application No. 39519, Andrew Butts' entry with permit application No. 39526, and Jay Butts' entry with permit application No. 39527.

3/ John P. Stovall was named in each of the desert land entry applications involved herein as the individual who assisted in preparation of the application by giving advice to appellants concerning location of the entry and the farm plan. The case record in N 28864 also shows that John P. Stovall prepared application for water permit No. 39527 for one Loretta F. Prince in November 1979.

4/ The case record in N 29257 contains a confirmation dated Feb. 7, 1984, of a telephone conversation between the Nevada State Office and the office of the State water engineer reporting that the State records showed that water permit application No. 39519 was canceled Sept. 29, 1980. A Feb. 3, 1984, confirmation of a telephone conversation in the case record for N 28862 states that water permit No. 39526 was also canceled on Sept. 29, 1980. The case file for N 28864 contains a copy of application for permit No. 39527 which shows it was canceled Sept. 29, 1980.

Although at the time the desert land applications in question were filed appellants may have proceeded as far as possible to acquire the right to appropriate water, it is clear from the case records that subsequent cancellation of the water permit applications being relied upon by them rendered their desert land applications subject to rejection, and they were properly rejected by BLM. Rejection, however, is not prejudicial to appellants' right to file new applications with evidence of newly initiated efforts to obtain sufficient water rights.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Administrative Judge

We concur

R. W. Mullen

Administrative Judge

Edward W. Stuebing

Administrative Judge

